

Citation for published version:

Conteh, F & Maconachie, R 2019, 'Spaces for contestation: the politics of community development agreements in Sierra Leone', *Resources Policy*, vol. 61, pp. 231-240. <https://doi.org/10.1016/j.resourpol.2019.02.016>

DOI:

[10.1016/j.resourpol.2019.02.016](https://doi.org/10.1016/j.resourpol.2019.02.016)

Publication date:

2019

Document Version

Peer reviewed version

[Link to publication](#)

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Spaces for contestation: The politics of community development agreements in Sierra Leone

Abstract

Across mineral-rich sub-Saharan Africa, it has become increasingly common for mining companies to support development schemes in host communities where resource extraction takes place. The negotiation of so-called ‘community development agreements’ (CDAs), provides an opportunity to address the social and environmental impacts of mining, while at the same time serving as a platform through which company-community relations can be mediated. Unlike discretionary corporate social responsibility programmes, in many countries, CDAs are embedded in law, invoking parties’ mutual commitments and responsibilities. Such initiatives have been heralded as ‘game-changers’, promising equitable redistribution of wealth, structured community development and stable investment climates for extractives companies. However, factors that concern the *process* of their negotiation, coupled with *structural* weaknesses, can affect their implementation, transforming them into spaces of contestation which can threaten their potential. Drawing upon fieldwork carried out in Sierra Leone between 2013-2018, this paper critically explores the contested nature of CDAs. Focusing on two different case studies in the south and east of the country, it argues that such agreements will only contribute to genuine development in host communities if the longstanding issues that have stalled the pre-existing forms and instruments of community development are systematically addressed.

1. Introduction

Over the past two decades, community development programmes have become embedded in the Corporate Social Responsibility (CSR) programmes of mining companies across the globe (Kemp and Owen, 2013; Newell, 2005; Hamann, 2003), as they are increasingly regarded as effective mechanisms through which they can obtain their ‘social licence to operate’ (Moffat and Zhang, 2014). Although voluntary community development programmes have for a long time defined mining companies’ CSR strategies, many resource-rich governments are now changing tack, formally adopting laws that force mining companies to pay for and carry out socio-economic development projects in communities where resource extraction is taking place (Dupuy, 2014). In theory, such Community Development Agreements (CDAs) can provide an effective instrument for ‘locking in’ all parties to long-term development commitments, defining mutual obligations and building a shared sense of responsibility (EI Sourcebook, 2011). Moreover, CDAs can facilitate the mitigation and resolution of community-company conflicts (Gathii and Odumosu-Ayanu, 2016), particularly in situations where governments fail to effectively provide basic services for resource endowed communities, and companies are forced to intervene in order to wade off opposition to their operations (Nwapi, 2017).

However, there is no guarantee that CDAs will deliver these benefits, as much depends on the context, the design of the CDA itself, and the way it is implemented. In fact, it has been observed that CSR approaches which prioritise ‘risk mitigation’ and corporate public relations often tend to shape their community engagement programmes based on the benefits that accrue to the company, rather than the actual development needs of local communities (Owen and Kemp, 2012). Evidence further suggests that corporate-sponsored community development often tends to be conservative, with many companies seeking to control and regulate development processes implemented in host communities (Banks *et al.*, 2013). Other commentators note that corporate-sponsored development programmes may deliberately try to avoid supporting certain kinds of community development, as empowered communities may pose a greater risk to business success and profitability (Kemp, 2010).

O’Faircheallaigh (2013) raises some key challenges that concern the successful implementation of CDAs in the mining sector, including the implications of unequal bargaining and power relationships between communities and companies, inequity in the distribution of benefits generated by CDAs, and the enforceability of agreements. Focusing more specifically on the African context, Nwapi (2017) further highlights the differing approaches to CDAs that various African countries have adopted, arguing that a number of factors determine the success or failure of an agreement, including: the definition of ‘community’, the conditions under which the CDA is created, the enforceability of the agreement, the success of compliance monitoring, the institutional framework for the implementation of CDAs and the shortcomings of various political regimes.

Building on this growing critical literature, this paper focuses on the case of Sierra Leone, narrowing in on the contested nature of CDA negotiations and exploring more specifically the politics that envelop the development and implementation of such schemes. Focusing on two different case studies in the south and east of the country, the paper argues that CDA agreements will only contribute to genuine development in host communities if the longstanding issues that have stalled the pre-existing forms and instruments of community development are systematically addressed. In particular, a number of factors have shaped, and will continue to shape, the outcomes of CDAs including: the laws and traditions governing the ownership of land; elite bargaining schemes prevalent in particular mining localities; pre-existing company-community forms of engagements; the ‘image’ of companies; and provisions in laws and policies governing mineral wealth redistribution, including the mineral lease agreements signed between the Government of and companies. Indeed, such factors have shaped previous attempts to foster community development in mining areas, particularly in the aftermath of the country’s decade-long civil war of the 1990s, where successive governments have introduced progressive policies and programmes geared towards improving extractive sector governance, rent sharing, peacebuilding, and the equitable distribution of resource wealth (Nwapi, 2017; Dupuy, 2014; Maconachie, 2010). For example, in 2001, the Government introduced the Diamond Area Community Development Fund (DACDF) through which 0.75% of the 3% export tax from artisanal diamonds is returned to host communities for local development (Maconachie, 2010; 2009; 2012; World Bank, n.d.; Dupuy, 2016). The Mines and Minerals Act of 2009 (MMA 2009) also provides a framework through which landowning families, whose lands have been affected by the operations of mining companies, are compensated. The MMA 2009 obliges all small and large-scale mining companies to sign Community

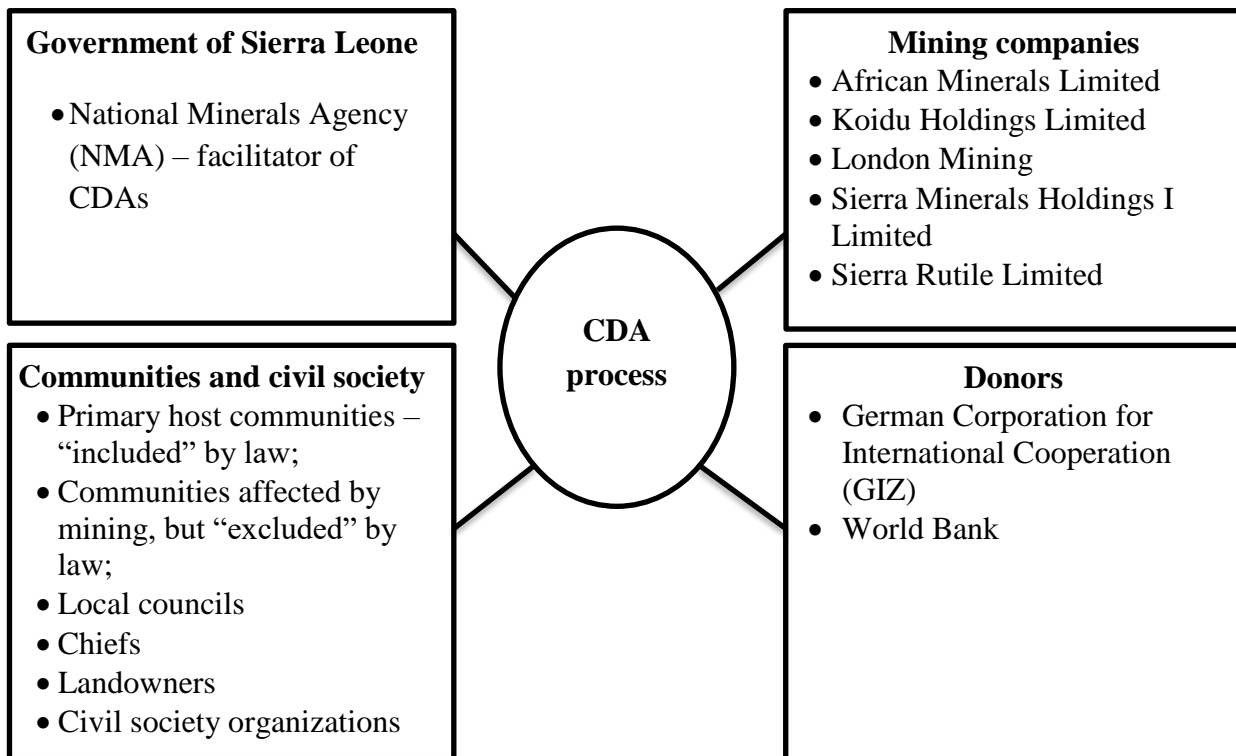
Development Agreements (CDAs) with host communities, through which their relations should be mediated.

This article traces and analyses the process leading to the design and implementation of Sierra Leone's Model Community Development Agreement (MCDA), through which the Government redistributes resource rents to communities affected by small and large-scale mining to promote community development. The main question it seeks to investigate is, why, despite the enactment of CDA provisions into law in 2009, are mining communities still confronted with the perennial challenges of elite capture, power imbalances, exploitation and underdevelopment? It is argued that although the aim of reinvesting resource rents in communities affected by mining through CDAs represents a positive departure from previous exploitative and patrimonial governance practices, factors that concern the *process* of their negotiation, coupled with *structural* weaknesses, continue to threaten their design, implementation and success. Moreover, the redistribution of resource rents will only contribute to meaningful development in host communities, if the longstanding issues that have stalled pre-existing forms of community development are systematically addressed, a process which would involve the restructuring of power relations between communities, companies and the political class.

As previously noted, the argument developed in the paper focuses on two main case studies in Sierra Leone, drawing upon a range of interviews and focus group discussions conducted with affected community leaders, mining company officials, civil society activists, local and central government officials and donor staff. In the first period of fieldwork between 2013 and 2015, data were intermittently collected from a mine site located in the south of the country – Mobimbi, where Sierra Rutile Limited, a company that is listed on the London Stock Exchange, has operated for many years. Follow-up interviews and focus group discussions were conducted at the site in November 2017. During the second phase of fieldwork between January and November 2017, data were collected in Koidu at the site of Koidu Holdings Limited, a Kimberlite diamond mine in Kono District owned by the Israeli businessman Beny Steinmetz. Although these two sites represent the paper's main cases, where necessary reference is made to other sites managed by small and large-scale companies in other parts of the country, in order to reinforce the arguments put forward in the paper.

Interview and focus group discussion data were complemented by observations and discussions by one of the authors, while serving on the CDA working group which was set up by the Government of Sierra Leone to develop the MCDA, as well as support its implementation. Given the delays between the time of the signing of the CDAs (2016 – 2017), and the payment of the companies' contributions (early 2018), the scope of the paper does not go beyond the latter, a period that coincided with the end of the first phase of research. Elite based interviews were conducted in Freetown, Koidu and Mobimbi with government and donor officials, chiefs, company executives, as well as civil society activists. Secondary data including company, government and civil society reports have also been analysed to support the paper's argument. In order to ensure that informants were able to express themselves freely during interviews and focus group discussions, the sessions were conducted anonymously, except where respondents expressed consent to be explicitly identified (Fig. 1).

Figure 1: Key actors in the CDA process at the time of fieldwork



The paper is structured as follows. Following this introduction, section two provides some important contextual background, by introducing CDA requirements in Sierra Leone’s mining law and companies’ Mineral Lease Agreements (MLAs), as well as the MCDA developed by the Government of Sierra Leone. Here, the analysis draws out some of the inconsistencies and contradictions within such legal documents, which have contributed to a fraught process of CDA implementation. Section three critically explores the political economy of the CDA working group, set up by the government to develop the MCDA, as well as support its implementation. It demonstrates how difficult policy processes and dialogue can be, in contexts where actors’ interests are in many ways different from those of the communities they claim to represent. In the fourth section, the paper analyses the consultation processes that led to the selection of Primary Host Communities (PHCs), examining strategies of “inclusion” and “exclusion”, a process that invariably produces (and reproduces) “winners” and “losers”. Section five analyses the politics that underpin the signing of the CDAs and the contestations over the payments of the funds by the companies, whilst the sixth section provides some concluding remarks.

2. The legal foundations of CDAs in Sierra Leone

Sierra Leone is among a growing number of countries that have enacted CDA provisions into law, making it obligatory for small and large-scale mining companies to enter into agreements with their PHCs (Nwapi, 2017; Dupuy, 2014). The parent law from which the country’s CDAs derive their

legitimacy is the Mines and Minerals Act of 2009 (MMA 2009), which sets out the obligations of mining companies to PHCs, outlining how the latter are defined and chosen from among a number of interconnected communities affected by the operations of mining companies. Supplementary legal provisions for CDAs are also contained in the individual Mining Lease Agreements (MLAs) of companies, as well as the Model Community Development Agreement (MCDA) which was drafted by a multi-stakeholder working group (Interview with Civil Society Activist, Freetown, 14 November 2017). Although the intent of these legal and regulatory documents is to ensure certainty and clarity with respect to parties' obligations and expectations within the framework of CDAs, they suffer from inconsistencies, and have contributed to making their implementation a contested process. For example, section 138 of the MMA 2009 states that:

The holder of a small-scale or large-scale mining licence shall assist in the development of mining communities affected by its operations to promote sustainable development, enhance the general welfare and the quality of life of the inhabitants, and shall recognize and respect the rights, customs, traditions and religion of local communities (Government of Sierra Leone, 2009:106).

The above section states the general principle of what is expected of mining companies in relation to the development of their host communities. Whereas previously, companies' contributions were dependent on discretionary CSR, the law makes it mandatory for them to play a role in community development. However, subsequent provisions in the law which specifically oblige companies to enter into CDAs with PHCs are less clear. If anything, they contradict the general principle of responsibility of the companies to contribute to the development of affected communities. For instance, section 139 (1) of the MMA 2009 states that 'the holder of a small-scale or large-scale mining licence is required to have and implement a community development agreement with the primary host community...' (Government of Sierra Leone, 2009:106). Juxtaposed with section 138, the insertion of the subjective term, *primary host community*, reinforces the process of 'inclusion' and 'exclusion' and of 'winners' and 'losers' in communities whose welfare and quality of life are affected either directly or indirectly by the operations of mining companies, no matter where they are located.

While an attempt has been made in section 139 (2) to clarify what a PHC is, the contradiction is further compounded by the provision that the PHC is a single '...community of persons mutually agreed by the holder of the small-scale or largescale mining licence and the local council ...within thirty kilometres... of any boundary defining the large-scale mining licence area' (Government of Sierra Leone, 2009: 107). 'Proximity' is thus prioritised over 'impact', leaving room for communities outside the 30 kilometre radius, but affected by the company's operations, to contest their exclusions. In contexts where the operations of mining companies span several villages, with chiefdoms and districts directly and indirectly affected by their operations, the question then arises as to how the PHC is determined without causing further disruptions to pre-existing communal ties, as well as ensuring an equitable distribution of the costs and benefits of mining among communities.

All of Sierra Leone's large-scale mining companies are affected by this challenge: Sierra Rutile Limited, a subsidiary of Iluka, operates in five chiefdoms spanning two districts; Sierra Minerals Holding's operations span eight chiefdoms; Shandong Steel, formerly African Minerals, operates

across eleven chiefdoms, in three districts; and the operations of the diamond mining company, Koidu Holdings Limited, affect two chiefdoms in Kono District. This fact therefore makes it less useful to only use a measure of ‘proximity’ in the determination of the PHC. In addition, even where multiple communities are affected, some may be more affected than others even within the same chiefdom or district. Such is the case with Koidu Holdings Limited, where Tankoro is the chiefdom that is directly affected, but Gbense its neighbour, has been incorporated into the CDA through the participation of the Koidu New Sembehun City Council, given that the boundaries of the two chiefdoms overlap within its jurisdiction.

Another issue at the heart of contestations between mining companies and communities in the negotiation of CDAs is the amount of financial resources that companies are required to contribute to the process. Framers of the MMA 2009 attempted to harmonise companies’ CDA contributions by requiring them to annually spend on their host communities “...no less than one percent of one percent of the gross revenue amount earned by the mining operations in the previous year to implement the agreement...” (Government of Sierra Leone, 2009: 107). However, this amount has come under scrutiny from stakeholders including the government, communities and civil society, who argue that it is a paltry sum relative to the annual turnover of companies. The official explanation given by Government of Sierra Leone officials for the insignificant contributions the companies are required to make is that the original intention was for them to contribute 1% of their annual turnover, and that the 0.01 percent contained in the law, is the result of a typographical error (Interview with Government Official, Freetown, 13 July 2017). This explanation, however, seems unlikely, given that the MMA 2009 had to go through several phases of drafting and a gruelling legislative process.

However, interviews with civil society and community activists reveal a more cynical picture, suggesting a deliberate action at the time of the drafting of the law to make the companies pay less, as part of the government’s “concessions to companies for investing in what was at the time an unattractive investment destination” (Interview with Civil Society Activist, Freetown, 14 November 2017). The challenge that government officials faced at the time is one that countries with unattractive investment environments have to grapple with, as they constantly weigh up the costs of ‘over’ taxing companies, against those of them taking their investments elsewhere. As Batty has argued, while mining companies supported the enactment of the MMA 2009, “they expressed an unwillingness to cooperate if the government increased tariffs and royalties beyond what they deemed profitable for their operations” (Batty 2013: 366–7). It would therefore appear that rather than losing on taxes and royalties accruable to the government, communities’ development needs were part of the sacrifice that the government was prepared to make to retain the investments of companies. Nonetheless, what communities lost in the MMA 2009, they were able to gain in the companies’ individual Mineral Lease Agreements (MLAs), when the government renegotiated them with the companies. Table 1 below illustrates the financial contribution that companies agreed to make to the implementation of CDAs based on their individual MLAs before the crash of commodity prices in 2014, which saw African Minerals and London Mining going into administration.

Table 1: CDA Contributions by Mineral Lease Agreement

Company	CDA contributions as per MLAs
Koidu Holdings Limited	0.25%
African Minerals	0.1%
Sierra Minerals Holdings I Limited	1.0%
Sierra Rutile Limited	US\$75,000 or 0.1
London Mining	1.0%

Source: *Compiled by the authors from the MLAs of the companies.*

One noticeable result of the revisions to CDAs was that companies were to make different contributions, as opposed to the harmonized contributions stipulated in the MMA 2009. On paper, Sierra Minerals Holding and London Mining were to be the largest joint contributors with 1% of annual turnover before tax; followed by Koidu Holdings Limited with 0.25% and African Minerals 0.1%. Sierra Rutile Limited's MLA, which was revised in 2004 long before the MMA 2009 was enacted, did not make any reference to a CDA, but rather to an Agricultural Development Fund to which it would contribute "US\$75,000.00 or one tenth of one percent (0.1%) of gross sales free alongside ship at the Sierra Leone port of shipment..." whichever was higher. It is not entirely clear what accounted for the variations in companies' respective CDA contributions after the revisions, but as one government official put it, "the variations are probably due to the transactional pattern of contract negotiations, and I am sure there are trade-offs" (Interview with Government Official, Freetown, 14 January 2018). Transactional patterns of negotiations in the mining sector are well established, featuring not only in the negotiation of MLAs, but also in the informal adjustment of taxes in the export of minerals to disproportionately benefit one set of exporters against others, regardless of pre-existing legal taxation regimes (Interview with Government Official, Freetown, 15 September 2017). As will be demonstrated later in the paper, the payment of CDA contributions has also been affected by this phenomenon, despite the provisions in the MMA 2009 and the MLAs of the companies. Now that the legal foundations of the CDAs, as well as their contentious basis have been established, the next section of the paper will shift to focus on the development of the Model CDA, and the political economy of the technical working group that was set up to draft it.

3. The political economy of the CDA working group

Although the MMA 2009 makes provisions for mining companies to implement CDAs with their PHCs, it was not until 2013 that the first practical steps were taken towards their implementation. The setting up of the National Minerals Agency (NMA) in 2012, fulfilled a long-standing demand by donors and civil society for the policy and regulatory functions within the mining sector to be separated between the Ministry of Mines and the NMA respectively (Interview with civil society activist, Freetown, 14 November 2017; Interview with government of Sierra Leone official, Freetown, 13 August 2014). The NMA established a multi-stakeholder CDA Working Group consisting of officials from civil society, government, donors and the mining companies to develop the MCDA template to guide the development of agreements across all mining sites. Whereas the final version of the MCDA relied on the MMA 2009 for its guiding principles, the idea of a Model

Agreement was itself somewhat in opposition to the spirit of the MMA 2009, which notes that “a community development agreement shall take into account the unique circumstances of the licence holder and primary host community...” (Government of Sierra Leone 2009: 109). However, the generic need to address the power imbalance between communities and mining companies necessitated a Model Agreement. Communities’ lack of capacity to negotiate original CDAs with mining companies, who can afford the best legal advice available, made a Model Agreement inevitable (Interview with Government Official, Freetown, 13 August 2014).

The provisions of the MCDA are prescriptive and generic. These include: 1) how negotiations, if any, should be conducted; 2) the parties’ mutual obligations, such as communities’ recognition of the right of companies to operate in a peaceful environment; 3) when and how to review the agreement; 4) the approval process; 5) the decision making structures; 6) representation of communities’ heterogeneous groups; 7) positive and negative lists detailing projects on which CDA funds can, and cannot be spent; and 8) perhaps more importantly for host communities whose MLA would change hands from one company to another during the life of agreements, the Model noted that:

In the event that the Mining Lease Agreement held by the Mineral Right Holder subject to this Agreement is transferred to a third party, the transferee shall be deemed to have assumed all rights and obligations of the transferor under this Agreement (Government of Sierra Leone, n.d.: 10).

The issue of the transferability of CDA liabilities from one company to another is critical for mining host communities in a country such as Sierra Leone, where there is a history of frequent changes in mining rights ownership. But the challenges associated with the ‘inherited commitments’ of companies’ community development programmes, is, of course, not peculiar to Sierra Leone. As Hilson (2011) notes, across sub-Saharan Africa, it is exceedingly difficult to predict how new ownership will approach the interrelated challenges of environmental protection and community development, following the takeover of a mine. As we shall see, in the case of Sierra Leone, it is an issue that has formed part of the cause of the many disagreements between companies and their PHCs.

The process of developing the MCDA was as contentious as it was exclusionary. The communities affected by mining were not directly represented in the Working Group, and the political ‘manoeuvres’ that took place during negotiations illustrate the difficulties involved in such policy processes. It became clear that the interests of some of the actors were diametrically opposed to those of others, which affected progress in the drafting of the Agreement and its eventual implementation. Civil society representatives attempted to suppress other actors’ voices and views, while amplifying their own, by constantly reminding them of the fact that they were the leading advocates for the adoption of CDAs in the country, and consequently should have a preponderant voice in the process (Interview with civil society activist 24 April 2014). This assertion was, however, challenged by both the government and donor officials who argued that such claims were only meant to mask civil society agendas (Interview with donor official, Freetown, 8 August 2018; Interview with government official, 13 July 2017).

Indeed, beyond the drafting of the Model Agreement, civil society organisations wanted to carve out a major role for themselves in the implementation of the CDAs – both in terms of representation in the Community Development Committees (CDCs) that would determine which community development projects were pursued, and in terms of the monitoring of their implementation – which raised conflict of interest concerns for other actors (Interview with donor official, Freetown, 8 August 2018). The desire of civil society actors to assume a dominant role in the CDA process was rejected by government officials, because they saw it as an intrusion into their mandate under the authority of the NMA to oversee the implementation of the CDAs. The government therefore moved to dissolve the working group as soon as the draft agreement was completed (Interview with government official, Freetown, 15 September 2017). Even before the Model Agreement had been drafted, some civil society organisations had already secured donor funding for the national rollout (interview with civil society activist, 13 April 2014), dismissing donors’ suggestion for a pilot in one or two mining sites that would generate lessons for guiding national implementation.

It is important to note that when it came to debates over a “pilot” versus “national rollout”, both civil society and government representatives were unanimously opposed to any suggestions of a pilot, preferring instead a national rollout, with all its potential disadvantages (Interview with donor official, Freetown, 8 August 2018). One civil society representative, who reckoned that donors’ concerns, especially those of the World Bank, had to do with the availability of resources, noted:

...the World Bank should take their money, if their concern is about money. We are also capable of raising funds, and this is the reason why every company should be involved in the process (Discussion with Civil Society Activist, 13 April 2014).

The Bank was one of two donors represented in the CDA working group, together with the international development arm of the German Government, GIZ. While donors’ role was mostly limited to providing “expert advice”, it was not always welcome, especially when it went against the interests of other actors. The role of the World Bank was particularly criticised by civil society representatives who regarded its approach of fostering critical debate as disruptive, time wasting and undermining the principles of national ownership (Discussion with Civil Society Activist, 13 April 2014).

Concerns that the World Bank was slowing progress, and that its policy advice was often oblivious to the country context, were frequently raised by the government and civil society representatives. Such concerns reflected a growing atmosphere of anti-donor sentiments amid a booming mining sector at the time, as well as fears of both the NMA and civil society not meeting their annual targets. For civil society representatives, the time-bound funding which they had secured from donors for the implementation of the CDAs meant that speed was to be prioritised over the quality of implementation. The NMA, on the other hand, wanted a ‘fast track’ national rollout because they thought it was easily achievable, and had included the signing of five CDAs across five sites by December 2014, in their Performance Management Contract with State House (Discussion with Government Official, Freetown, 13 August 2014). However, the optimism harboured by the NMA

to be able to facilitate the signing of five CDAs, was not informed by an understanding of the socio-economic and political realities that shaped the operations of the companies, the dynamics that underpinned company–community relations, or inter-community and intra-community relations (Interview with donor official, Freetown, 8 August 2018). The first CDA was not signed until 23 December 2016, by Sierra Minerals Holdings, more than two years behind schedule (Interview with Government Official, Freetown, 15 September 2017).

The relationship between civil society and mining companies' representatives in the working group was also not cordial, as the latter rejected civil society demands for an enlarged role after the drafting of the MCDA; and the reason for the rejection was more substantial, given that had the working group accepted such a suggestion, the CDAs would have become much more embroiled in contestations than they are today. While the working group represented one of few forums where civil society and mining companies worked together, their relationship has never been cordial. The end of the civil war in 2002 saw the emergence of vibrant extractive-based civil society organizations which have constantly raised the concerns of mining affected communities, while putting pressure on the government to ensure an equitable spread of benefits to such communities (Dupuy, 2014; Fanthorpe and Gabelle, 2013). A 2007 study of the operations of mining companies in Kono District, for example, painted a picture of exploitation, environmental degradation and a lack of commitment by the companies to meaningful community development (NMJD and CJM, 2007).

By the time the first CDA was signed, the working group had been dissolved with the NMA firmly in charge, and civil society organizations had withdrawn from the process, albeit grudgingly. As one of their representatives put it, "I was with them up to a point when the NMA said they didn't need civil society going forward. So I had to withdraw from the process because I realized we were no longer needed" (Interview with Civil Society Activist, Freetown, 14 November 2017). The actions of the NMA to limit civil society's participation in the implementation of the CDAs has received backing from donors, and as one of them remarked, "there were CSOs who had their own agendas, using the working group as a platform to always be involved in the process, not necessarily because they wanted to contribute to its effective implementation" (Interview with donor official, Freetown, 8 August 2017).

4. PHC identification and the production of "winners" and "losers"

In many ways, the processes underlining CDA consultations and their outcomes reflected wider fears expressed by some on the CDA Working Group in relation to challenges of elite capture, with council leaders and chiefs playing a dominant role. Although local council leaders are popularly elected by universal adult suffrage, they have frequently been the subject of corruption allegations (Conteh, 2016; 2017). The election of chiefs on the other hand, has been the subject of much resentment, as they are restrictively elected by tribal authorities made up mostly of men – excluding woman, youths and other vulnerable groups. However, as with the local councils, chiefdom governance has been characterised by corruption, exclusion and marginalization of the poor (Conteh 2014; Richards, 1996).

The implementation of the CDAs was a process that was not immune to these underlying power differentials. Initial stakeholder consultations and the identification of PHCs were processes that proved difficult given the many actors involved (especially those who feared their exclusion), and the complex pre-existing dynamics through which mining company–community relations were mediated. CDAs were going to be implemented in contexts in which all mining companies had pre-existing community development arrangements, with paramount chiefs and local councils as the principal interlocutors of communities, and who, along with other members of the elite, formed the participants in the consultation meetings. One of the authors attended two CDA consultation meetings in two mining sites in the north of the country in July 2014, and at both meetings women and youths were noticeably absent. Participants were mainly drawn from the central government, companies, chiefs, local councils and other groups often under the control of the elite. The patriarchal basis of the communities thus manifested itself, and the established patterns of transactions between chiefs, companies and local councils dominated many of the discussions that took place, without any representation of the views of ordinary people.

For example, Sierra Rutile Limited had set up the Sierra Rutile Foundation (SRF) in 2009, and subsequently entered into an agreement with the two District Councils of Bonthe and Moyamba, and not directly with the affected communities, for the implementation of a number of development projects (Interview with Head of Community Relations, Sierra Rutile Limited, Mobimbi, 24 May 2014). However, the Foundation’s establishment had more to do with a business and publicity need, than a genuine desire to ensure community development. It was set up as part of the conditions for an unsuccessful loan application, which the company had submitted to the International Finance Corporation (Discussion with Government of Sierra Leone official, Freetown, 16 May 2014). Sierra Minerals Holding also had a similar foundation, and while companies supported community development through principles of CSR, funds were frequently captured by chiefs in very personalised transactions, such as the provision of private vehicles, which were not always recorded in companies’ books (Interview with Sierra Minerals Holding official, Mobimbi, 22 November 2018). Chiefs’ lack of transparency is perhaps best summed up by one chief when asked about how much she had received from Sierra Rutile Limited in the previous year. She replied: “if it were you, would you tell people how much you’re paid?” (Interview, Paramount Chief of Imperi Chiefdom, Gbangbama, 25 May 2014). A senior official of Sierra Rutile Limited acknowledged the difficulties faced in formalizing support to their wider host communities at the time, but noted that they had moved from when communities did not have an impressive view of their support, “to having the cost of expenditure on the community as part of the operational cost of the company” (Interview with Sierra Rutile Limited official, Mobimbi, 24 May 2014).

It is thus clear that those who had disproportionately benefited from the pre-existing arrangements would be opposed to the CDAs, whose aim, at least on paper, was the expansion of mining benefits to wider communities. For example, during stakeholder consultations, the Community Relations Department of Sierra Rutile Limited demonstrated misgivings about the CDA and argued for the foundation to be maintained, suggesting that procedures of the CDA would be too elaborate for communities to understand and implement (Interview with Head of Community Affairs

Department, Sierra Rutile Limited, Mobimbi, 24 May 2014). Likewise, an official of Sierra Minerals Holding put forward a legal argument that their MLA called for a foundation, not a CDA (Interview with Chief Finance Officer, Sierra Minerals Holding, 25 May 2014). While such concerns were accepted as genuine, donors, however, sensed a fear among Community Department Relations staff of companies and chiefs, that the foundations would be dislodged. The personalised and opaque manner in which they had managed pre-existing relations would not be accommodated by the CDAs, which called for increased accountability (Interview with donor official, Freetown, 26 November 2018). Since the Sierra Rutile Foundation was established in 2009, it was never registered, nor its accounts externally audited, a fact that led to delays in the company paying its CDA contributions after the agreement was signed with the communities in 2017 (Interview with Managing Director, Sierra Rutile Limited, Mobimbi, 22 November 2017). A 2012 Internal value for money audit of projects implemented by the company's Community Relations Department found significant differences between project costs and the actual value of final outputs (Interview, Assistant District Officer, Bonthe, 26 May 2014).

The identification of PHCs followed the consultations, and while the MCDA remains largely prescriptive, the relative realities in the mining communities have tended to dictate the approach adopted by the NMA in deciding which communities are included and excluded, in some ways reflecting tensions between law, policy and realism. Whereas the CDA working group had been rigid in its approach, the NMA adopted the principle of 'flexibility', recognising the varied and complex dynamics of mining communities (Interview with Government of Sierra Leone official, Freetown, 27 June 2014). The principle of flexibility thus recognised the need to thread carefully with pre-existing channels of company sponsored community development, as well as long-standing inter and intra-communal relations in affected communities. Flexibility, however, also has its shortcomings, including that of fostering inconsistency and reinforcing exploitative channels and forms of community development which have not ensured equitable redistribution of resource wealth. For example, where company foundations existed as in Sierra Rutile, the NMA was initially amenable to allowing them to serve as the basis from which CDAs would eventually evolve (Discussion with Government of Sierra Leone official, Freetown, 27 June 2014). This was, however, opposed by the community, and a change in the ownership of the company not only led to the termination of the foundation, but also the first ever audit by external auditors, whose report was still pending at the time of writing (Interview with Managing Director, Sierra Rutile Limited, Mobimbi, 22 November 2017).

However, a consistent feature of the PHC identification process has been the pre-selection of PHCs by stakeholders who do not always represent the diverse interests of communities (focus group discussions in Mobimbi and Koidu in November 2017). For the most part, PHC identification meetings have been rubber-stamping forums, in which prepared lists of PHCs are approved by participants and endorsed by the NMA, with outcomes only ever being challenged after the meetings have concluded. This is not surprising given that participants are mostly elite actors – chiefs, members of parliament (MPs), local council officials and other co-opted individuals, whose interests often converge, given the homogeneity and less conflictual basis of their interests (Conteh, 2017). The fact that local councils, which by law should jointly decide the PHC with companies, would

concede to the active participation of other members of the political class, while excluding ordinary community members, is indicative of elite solidarity, regardless of existing legal constraints. Thus, limiting participation in the PHC identification process to the elite, introduces a completely new dimension to the politics of CDAs based on class, and through which processes of “inclusion” and “exclusion” are reinforced by long-standing structural factors underpinning the distribution of power and resources, and not necessarily by ‘proximity’ or ‘impact’.

Whereas the CDA process has been dominated by the elite, their dominance has not gone unchallenged, with land owners perhaps providing the biggest threat. Indeed, ownership of land, as we shall see, accords one a number of privileges in Sierra Leone. In all mining sites, the identification of PHCs has been carried out with varying degrees of participation of the key stakeholders identified above. Although the meetings have led to agreements on the PHCs for each mining company, some of the processes and outcomes have been challenged by those that have felt marginalized or excluded. Two cases deserve special attention here – one at the Sierra Rutile Limited site which led to intra-community disagreement, and the other at Koidu Holdings Limited, which also sparked an inter-community dispute. At Sierra Rutile Limited, members of the Land Owner’s Association have contested what they have referred to as their limited representation in the CDA process, given that “only two of our members represent us in the CDC”, as well as the exclusion of its chairman from the process (Interview with Chairman Land Owners Association, Mobimbi, 21 November 2017). They also contended that because they have leased their lands to the company, and some of their members have been relocated, they should be the main beneficiaries of the CDA, despite receiving surface and other rent payments from the company.

The ownership of land in rural Sierra Leone, is in most cases vested in “land-owning families”, but held in “trust” by Paramount Chiefs regarded as “custodians” of all lands in their respective chiefdoms. Generally, land-owning families are those that can “...trace their lineage to the ‘original’ inhabitants of the village...” (Ryan, 2018: 194). They have unrestricted land use rights, as well as the privilege to dispose of it to “strangers”, including multinational corporations, for which they are to receive annual surface rents. . Although it is generally assumed that “the natural resources of a country belong, after all, to its people” (Wenar, 2008: 9), mining communities across Sierra Leone do not necessarily share this view of collective national ownership, instead projecting a rather community-centric claim to them. For instance, the indigenes of Kono, the country’s most diamondiferous district, “have historically insisted that profits from diamonds mined in their district belong primarily to Konos” (Batty, 2013: 365). This position is undoubtedly a reaction to decades of environmental damage and human rights violations caused by mining, without any corresponding investments in the district by mining companies and governments.

Beyond the debates over who should be the main beneficiaries of the CDA at the Sierra Rutile Limited mine site, longstanding disagreements between the company and the leadership of the Land Owners Association (representing the interests of land-owning families) have also influenced on-going tensions. The Chairman of the Land Owners Association has argued that he has not been made Chairman of the CDC, nor allowed to be a member because of his longstanding activism against the company and chiefly structures that he alleges are responsible for the suffering of land owners

(Interview with Chairman Land Owners Association, Mobimbi, 21 November 2017). This has been disputed by the Chairman of the CDC who has argued that the Chairman is not actually a landowner, and that “he has been pretending to be one, which is a very dishonest thing to do” (Interview with Chairman, CDC, Mobimbi, 22 November 2018). The right to participate in the CDA process, which can be derived from being part of the political class as we have seen, or by being part of the Land Owners Association, is never a constant right. It can be taken away from anyone, once their circumstances change. In the case of land, one’s loss of right to ownership has many impacts, including the loss of livelihoods.

The prevention of the Chairman of the Land Owners Association from participating in the CDA process came about when some land owners, allegedly under the influence of the company and chiefs, challenged his ownership of land, arguing that his family had never owned land, apart from what was pawned to his father by some community members in the 1970s (Interview with Chairman Land Owners Association, Mobimbi, 21 November 2017). In this situation, ordinarily, what should be in dispute is not the Chairman’s ownership of land, but rather how the land was acquired. It is probable therefore that his exclusion from the process was a function of revenge, as well as an attempt to prevent him from influencing the CDA in a direction that did not serve the interests of the company and chiefs. In rural Sierra Leone, where chiefs’ powers are largely unrestrained, community activists who tend to challenge them often find themselves ostracised, banished or have trumped-up allegations made against them to keep them intimidated (Conteh, 2014). What is clear in this case is that an individual’s right to participate in the CDA process is not acquired and protected by merely being a member of a designated PHC. The complex dynamics of mining communities mean that such rights can be transient, and one’s continuing participation is dependent on the extent to which other actors think their interests are served.

On the other hand, the case of Tankoro and Gbense Chiefdoms where Koidu Holdings Limited operates, illustrates how communities within 30 kilometres of a company’s concession can at best be marginalized and even excluded from being part of a PHC, because of historical rivalries among community leaders, the influence of national politics and the geographical spread of minerals (Interview with Civil Society Activist, Koidu, 29 November 2017). Despite the fact that the company’s mine site is located in Tankoro chiefdom, its operations nonetheless directly affect the neighbouring chiefdom of Gbense which is approximately two kilometres away. If one were to rely exclusively on the law, and using ‘proximity’ as a determinant, Gbense therefore should become part of the PHC as much as Tankoro is. However, Gbense has only been incorporated into the PHC on the grounds of tokenism, as well as for purposes of reciprocity, once its own Kimberlite diamond mine becomes operational. The chairman of the CDC states the situation clearly:

Actually, it is only Tankoro that is the primary host community. We only brought Gbense on board because we feel that they are also affected by the blasting that is normally done by the company. We chose to give them 20% of our money so that when their situation comes into being, they will do likewise (Interview, Chairman CDC, Koidu, 29 November 2017).

This manner in which Gbense Chiefdom was incorporated into the PHC is controversial and contravenes the MMA 2009. Here, the dynamics of pre-existing relations between the two chiefdoms became far more important in the determination of the PHC, than did provisions of law. The Paramount Chief and residents of Gbense challenged the outcome, arguing that they should receive 50% of the company's contribution to the CDA, given that many of the social services in their chiefdom, which are more developed, are also used by residents of Tankoro. As the chief noted:

When we talk about development, people think Gbense should get everything else because all government functionaries are here, electricity is here, even when you talk about the hospital the referral hospital. Talk that the referral hospital is for the district is a lie. It is in my chiefdom (Interview with Paramount Chief of Gbense Chiefdom, Koidu, 30 November 2017).

Indeed, Koidu Holdings Limited had previously extended support to the chiefdom long before discussions about CDAs started (e.g. the rehabilitation the Chiefdom Market), thus recognizing the impacts its operations are having on the community (Dalan Development Consultants, 2014). However, the Paramount Chief of Tankoro and chiefdom residents have always resented the company's attempt to split benefits, such as employment and community development projects, between the two chiefdoms. When, for instance, in 2002 after the civil war had ended, the company requested that the two chiefs submit equal numbers of youths to be considered for employment, the Paramount Chief of Tankoro challenged the company, noting that only Tankoro youths should benefit (Interview with Paramount Chief of Gbense Chiefdom, Koidu, 30 November 2017). In addition, these lingering tensions which are now emerging within the CDA process have not been helped by the fact that the two chiefs support rival political parties, and each has tried to block the other's political ambitions. As one Civil Society Activist explained:

The whole issue between the two of them could not be far from politics. The problem started at the time when Chief Kamachendeh wanted to run for the second time in Parliament, as Paramount Chief Member of Parliament for Kono District. Chief Saquee (of Tankoro Chiefdom) supported Chief Fasuluku of Sandor Chiefdom, instead of Kamachendeh. That was where the problem started (Interview with Civil Society Activist, Koidu, 29 November 2017).

Given the long-standing rivalry between the two chiefs and their chiefdoms, it is perhaps not surprising that Gbense's involvement in the CDA process has only been carried out indirectly through the Koidu New Sembehun City Council, which will manage the chiefdom's 20% share. Although in this case the participation of the local council is supported by law, and a means through which a compromise has been reached between the two rival chiefdoms, its involvement, however, illustrates the risks involved in the law granting local councils and the companies exclusive right to determine the PHCs. Such risks are often accentuated by the lack of effective accountability mechanisms to prevent resource capture, given the strong group solidarity existing among the elite (Conteh, 2017). First, by sanctioning only the local councils and mining companies to decide what constitutes the PHC, the law takes away the rights "...of the affected communities to participate in the decisions that would have an impact on their livelihood" (Nwapi, 2017: 208). Second, although the likelihood of local councils themselves directly becoming part of the PHCs is a distant probability given the vast expanse of communities adjacent to mining concessions across the country, the possibility still exists for them to negatively influence the process of identifying PHCs

in ways that favour or disadvantage certain communities in return for political patronage. This, for example, has become apparent in other contexts, such as in the role that the councils have played in the provision of decentralised health services in the country (Conteh, 2016).

5. “How can we implement the CDA without the money?”

Tensions within the law, the politics within the CDA working group, and the disagreements that have accompanied the consultations and identification of PHCs, have made the implementation of the CDAs challenging. As previously noted, the first CDA was not signed until two years after its due date, and getting companies and communities to agree on the former’s contribution has not been straightforward, despite provisions in the MMA 2009 and the companies’ MLAs. As with the consultations and identification of the PHCs, the signing processes have been embroiled in controversies, sometimes resulting in stalemates (Interview with Government of Sierra Leone Official, Freetown, 15 September 2017). Even though the contents of the agreements have remained largely uncontested, in the case of Koidu Holdings Limited, some stakeholders have questioned what they referred to as their ‘technical exclusion’ from the signing of the document (Interview with Government of Sierra Leone Official, Freetown, 15 September 2017).

For example, although the Paramount Chief of Gbense signed the document, he questioned the lack of a special provision for his signature on the document, unlike his counterpart in Tankoro. Shortly after the document was sent to Freetown for the Minister of Mines’ approval, the chief vehemently protested, which warranted the Minister to instruct the NMA to prepare a new document reflecting the change (Interview with Government of Sierra Leone Official, Freetown, 15 September 2017). This was followed by further protest by the Mayor of Koidu New Sembehun City Council, who objected to the fact that although the agreement was signed in his municipality and the City Council would be managing Gbense Chiefdoms’ share of 20%, no provision was made for him to sign the document. The Minister reinstructed the NMA for them to get him to sign. Finally, the minister himself raised objections that while provision was made for him to sign, his title – Minister of Mines and Minerals – was not stated. The NMA had to then effect the correction before resubmitting it for his approval (Interview with Civil Society Activist, Koidu, 29 November 2017). However, it took the Minister more than the stipulated 45 days required for him to approve the document (Interview with Government of Sierra Leone Official, Freetown, 15 September 2017). Although the objections of the Paramount Chief and Mayor may appear mundane and could be dismissed as unnecessary, in settings where mistrust among actors has been fostered by decades of rivalries between chiefs and their people, even such inadvertent oversights can be interpreted as insidious.

However, perhaps the biggest challenge to the CDA process has been the disagreement over the amount of money companies should contribute towards their implementation, and how to deal with the “outstanding payments which communities claim the companies owe them, given the absence of CDAs at the time” (Interview with Government of Sierra Leone Official, Freetown, 13 July 2017). With the exception of one of the companies – Shandong Steel – the process of paying CDA funds has been tortious, producing varying degrees of contestations and delays, depending on communities’ perceived willingness of the companies to pay. In 2016, Shandong Steel shocked

stakeholders when it announced that it had ring-fenced its CDA funds for all the years it exported iron ore, despite the fact that it had not signed a CDA with its PHC and it had gone into administration. At the time of writing, the community was in the process of opening its bank account for the company to pay its contribution.

However, Sierra Rutile Limited, which was allowed by the NMA to expend its community development funds through the foundation until 2015, has been embroiled in a disagreement with the PHC, even though it has not stalled implementation (Interview, Chairman CDC, Mobimbi, 28 April 2018; Interview with Government of Sierra Leone Official, Freetown, 15 September 2017). While the Company paid its CDA contributions for 2016 and 2017, it held back payment for 2015. This was due to confusion surrounding a sum of US\$ 75,000 paid from the foundation's account to unknown recipients for the implementation of projects, which took place after the NMA had placed a moratorium on the use of community development funds until the signing of CDAs (Interview, Chairman CDC, Mobimbi, 28 April 2018; Interview with Government of Sierra Leone Official, Freetown, 15 September 2017). Company officials have argued that the money was expended by the erstwhile Steering Committee on "unspecified projects" and they cannot be held responsible for the actions of previous owners and management (Interview, Chairman CDC, Mobimbi, 28 April 2018). The community, on the other hand, has disputed the company's stance, arguing that "buyers of companies do not only buy assets, they also take on liabilities" (Interview, Chairman CDC, Mobimbi, 28 April 2018). As a consequence, community demands and agitation for the 2015 backlog led the management of Sierra Rutile to institute an ongoing legal action in the High Court in Freetown against the Steering Committee and the two district councils of Bonthé and Moyamba, both of which were central to the management of the foundation's funds (Interview, Chairman CDC, Mobimbi, 28 April 2018).

The excuses of convenience which new owners of large-scale mining companies continue to use in order to evade the payment of liabilities incurred by previous owners, is not just limited to Sierra Rutile Limited. They have also been used by another large-scale companies and are becoming an avenue through which communities are easily short-changed, despite the environmental degradation and loss of livelihoods they suffer from mining operations. In 2014, London Mining, which had operated the Marampa iron ore mine at Lunsar in Port Loko District, went into administration with large amounts of CDA contributions owed to its PHC. During the negotiations which saw the sale of the company, the NMA unsuccessfully tried to get the potential buyers to agree to the payment of all outstanding CDA contributions owed by London Mining. However, Timis Corporation, which eventually bought the mine, refused to accept any CDA liabilities, arguing that it only bought assets, not liabilities (Interview with Government of Sierra Leone Official, Freetown, 13 July 2017). The ownership of the company has since changed hands, and while the new owner – the American company, Sierra Leone Mining – has signed a CDA with the community, it has refused to accept liabilities incurred by London Mining, advancing a similar argument put forward by Timis Corporation. While the ease with which new owners of mines have been able to absolve themselves of any responsibility for CDA liabilities owed by their predecessors has been necessitated by the weak economic outlook of the country and the need for the government to be generous to investors at the expense of communities, it nonetheless reinforces a dangerous precedent. In future, it will be

difficult to challenge such views of companies on mineral rights ownership, until enforceable legislation is enacted and implemented.

However, disagreements over the payment of CDA funds have not only occurred at mine sites with unstable mineral rights ownership. In fact, the process has been equally contentious at Koidu Holdings Limited's site, whose ownership has been relatively stable since the enactment of the MMA 2009. Soon after the CDA was signed in February 2017, disagreement ensued between the company and community over the payment of CDA backlog contributions, dating as far back as 2011. The company has disputed the community's claim that it should be paid outstanding contributions, noting that:

We have not been sitting idly here, doing nothing. The company gave money to fight Ebola, and we have things in the mines that we put monetary value on that we have been giving to the community. We didn't wait for the CDA to be signed. The NMA are doing the calculations of what we have been exporting and what the value should be. We will have to sit with them to see what can be taken out. The CDA does not say we should go back to 2011 (Interview, Company Executive, Koidu Holdings Limited, Koidu 28 March 2017).

The company has argued that while it had not signed a CDA with its PHC, it still supported projects from funds it designated for community development. Thus claims that it should pay backlog funds are unfounded. On the other hand, the community has argued that whatever the company had spent on community development before the signing of the CDA should be considered "good will, but not relevant to the development of the communities, because we were never consulted" (Interview, CDC Chairman, Koidu, 23 March 2017). Indeed, although the issue of community consultation in the development of projects is recognized in Koidu Holdings Limited's MLA which states that "...the leasee shall consult with the...community to mutually establish plans and programmes..." (Government of Sierra Leone, 2010: 16), the community has never been consulted (Interview with CDC Chairman, Koidu, 23 March 2017). Thus the exclusion of the community from decision making prior to the CDA has created an atmosphere of mistrust, with the community also disputing the actual value of the projects which the company implemented before the signing of the CDA. In 2014, the company claimed it expended US\$ 600,000 on community projects in its PHC (BSG Resources 2015), providing little or no details of the individual costs of each project. This amount, which is three times more than the US\$ 198,000 which the company agreed to contribute to the CDA for 2016 (Interview with NMA official, Freetown, 4 May 2017), has raised suspicions that it has been inflating its pre-CDA community development expenditures (Interview, CDC Chairman, Koidu, 23 March 2017).

Moreover, a list of community development projects implemented since 2011, compiled by Koidu Holdings Limited at the request of the NMA, "has raised questions in relation to the company's sincerity" (Interview, CDC Chairman, Koidu, 23 March 2017). The list included a bridge connecting the mine site to the community, but mostly used by its vehicles; empty oil drums given to residents of Tankoro; and granite chippings spread on the streets of Koidu and Tankoro. According to one civil society activist, all of these so-called projects "are things the company doesn't want because of the disruption they're causing to their operations at the mines, but on which they are now putting

monetary value” (Interview with Civil Society Activist, Koidu, 29 November 2017). At the time of writing, the NMA had asked the company “to explain the inclusion of goodwill gestures on the list” (Interview with NMA official, Freetown, 4 May 2018).

The practice of companies inflating their expenditure on community development projects, and CSR more broadly, is often reinforced by the fact that such expenses are untaxable. It is therefore probable that the company’s incentives for overstating its community development expenditure may not just stem from the need to avoid paying its backlog CDA funds, but also for tax evasion purposes – further depriving the community and the Government of Sierra Leone of much needed revenue. Apart from the possibility of the company over-stating its expenditure on community development in order to avoid paying the required taxes, to date it has only paid US\$ 100,000, slightly more than half of its agreed CDA contribution for 2017 (US\$ 198,000), arguing that “its difficult financial position doesn’t allow it to honour all its commitments to the community” (Interview with NMA official, Freetown, 4 May 2018). Community leaders have claimed that the failure of the company to pay its full CDA contributions has affected their development plans, and as one of leader rhetorically put it, “how can we implement the CDA without the money?” (Interview, CDC Chairman, Koidu, 29 November 2017).

6. Conclusion

Although the official imperatives driving the redistribution of resource revenues through CDAs are rooted in the lessons of conflict and bad governance practices in the mining sector, as argued in this paper, their design and implementation have also been shaped by a number of other factors. These include: the laws and traditions governing the ownership of land; elite bargaining schemes prevalent in particular mining localities; pre-existing company-community forms of engagements; the ‘image’ of a company; and provisions in laws and policies governing mineral wealth redistribution, including the mineral lease agreements signed between the Government of Sierra Leone and companies.

The CDA provisions in the MMA 2009 are simultaneously “inclusive” and “exclusive”, obliging companies to assist communities that are affected by their operations on the one hand, whilst introducing an exclusionary clause that limits companies’ assistance to communities within 30 kilometres of their concessions, on the other. This paradox presents fertile ground for potential future conflicts in mining areas. Provisions in law for companies to enter into CDAs with their PHCs, no matter how limited, are only as good as the degree to which they are enforced. Although a “flexible” approach to the implementation of CDAs which appreciates the peculiar circumstances of communities provides for a more organic and adaptive process, it nonetheless opens up the process to abuse. This was perhaps most apparent in the case of Koidu Holding Limited, where Gbense was going to be excluded from the PHC had it not been for future considerations of reciprocating Tankoro Chiefdom’s goodwill. Generally, one can observe the malleability of the law, either at the local level where stakeholders can choose to dilute its application, or completely ignore it; or at the national level where laws can be deliberately designed to be ineffectual, and different companies can be made to contribute different percentages to PHCs for the implementation of their CDAs.

The continuing dominance of “experts” in development processes is manifested in the development of the MCDA by the CDA working group, a process which went on for more than a year without any representation from the affected communities themselves. The absence of communities’ representation in the working group in some ways illustrates the arrogant manner in which “experts” often overestimate their abilities, while downplaying those of communities to meaningfully engage in, and impact such policy ‘spaces’. However, the emerging tensions within communities so far vindicate the need for their inclusion in the process at an early stage. The tensions also illustrate how attempts to suppress critical perspectives within the working group may have contributed to an oversight of many of the causes of such tensions, while some actors sought to maximise their interests against those of their peers and communities. Policy processes are never apolitical; and as with the implementation of the CDAs themselves, they can selectively exclude and include actors, as well as produce winners and losers.

In the case of Sierra Leone, the process of designing and implementing CDAs has remained a site of contestation that is shaped by politics at a variety of levels. The process of deciding on the PHCs has been largely dominated by the same elite actors who previously dominated community development ‘spaces’, thus excluding ordinary citizens. On the other hand, while international and local civil society organizations have continued to put pressure on companies to do more to redistribute wealth among communities affected by their operations, mining companies have either done so reluctantly, or have refused to do so, within a dire economic environment in which the government has been generous to them as a means of attracting and retaining their investments. This situation has been made critical by the fact that the regulator lacks the power to hold companies accountable to honour their commitments to PHCs, and is undermined by the actions of politicians. This then ensures that companies’ need to maximise profits, while limiting expenditure on the development of their PHCs, will go unchallenged.

Although it is perhaps too early to draw any decisive conclusions on the potential of CDAs to transform previously short-changed communities in Sierra Leone’s mineral-rich areas, there are a number of emerging lessons one can draw from their implementation, which may have implications for natural resource policy making more broadly. First, whilst embedding CDAs in mining laws reduces the discretion of mining companies in the development of host communities, it is important for them to reflect the complexities of the industry, communities and the nature of the impacts of mining on communities, regardless of their proximity to mine sites. Whereas the development of a model CDA is sometimes desirable in contexts where communities’ capacity to effectively negotiate with multinational corporations is weak or non-existent, it is still important for some flexibility to be built in such models to respond to changing circumstances. Fears of the dominance of mining companies in negotiations can be mitigated by the provision of legal assistance for communities by the state.

Further, as donors on the CDA working group pointed out during the drafting of the model CDA, it is important for such schemes to be piloted within a few mine sites, ensuring that vital lessons are learned, in order to inform national scale-up. Finally, it is fair to argue that the willingness or otherwise of mining companies to live up to their CDA commitments, is as good as the ability of

governments to effectively regulate them, ensuring that they comply with the terms of such agreements and other related laws. This would require the existence of independent regulators, capable of standing up to the power and resources of mining companies, in order to hold them accountable on the one hand, whilst ensuring that communities allow them to operate without disruptions, on the other. Ultimately, one way that governments can get mining companies to take their responsibilities and commitments seriously, is to ensure that negotiated CDAs become part of the licence application process for companies, rather than making CDAs by-products of licences, and agreements between companies and governments.

Acknowledgements

The authors wish to thank Humanity United for the financial support that made much of this research possible.

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